## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

ANA FARIA, PHILIPE FARIA, MARTA FARIA, : CATARINA TRAVASSOS, as successors in : interest and heirs at law of APOLONIA MORAIS : Plaintiffs :

vs. : C.A. No.: 2019-427-MSM-LDA

CITIZENS BANK, N.A., CITIZENS BANK, N.A., : d/b/a CITIZENS ONE HOME LOANS, and : OTORO, LLC : Defendants.

## DEFENDANT OTORO, LLC'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

Defendant Otoro, LLC ("Otoro") respectfully requests, pursuant to Fed.R.Civ.P. 12(b)(6), this Court dismiss all claims against Otoro set forth in the Amended Complaint (the "Amended Complaint") filed by Plaintiffs Ana Faria, Philipe Faria, Marta Faria, as successors in interest and heirs at law of Apolonia Morais ("Plaintiffs") based on the *prima facie* substantive and procedural defects in Plaintiffs' Amended Complaint.

As an initial matter, the Amended Complaint should be stricken because Plaintiffs failed to timely file a Motion to Amend Complaint. On November 20, 2020, Plaintiff filed an Emergency Motion to Extend Time to File Motion to File Amended Complaint (ECF No. 19). This Court entered an Order the same day granting Plaintiffs' motion for extension of time to file a *motion to amend the complaint* (emphasis added) through December 11, 2020. Plaintiffs failed to file a Motion to Amend the Complaint as directed by this Court, and instead simply filed the Amended Complaint on December 11, 2020 (ECF No. 20).

As to the substance of the Amended Complaint, the sole claim against Otoro in the Amended Complaint is Count II, seeking a declaratory judgment pursuant to 28 U.S.C. §2201 that (i) foreclosure sale of the Plaintiffs' Property on April 24, 2018 was invalid and void; and (ii) the

foreclosure deed recorded in the Land Evidence Records of the City of East Providence in Book 4041 Page 30 at 11:57 AM is invalid and void. Plaintiffs Declaratory Judgment claim against Otoro must fail because the foreclosure conducted by Citizens Bank, N.A. ("Citizens Bank") is invalid or void for the reasons set forth Citizens Bank's Motion to Dismiss, which Otoro incorporates herein.

## **CONCLUSION**

For the reasons set forth herein, Defendant Otoro, LLC respectfully requests this Court enter and order: (i) dismissing all claims against Otoro set forth in the Amended Complaint for failure to timely file their Motion to Amend their original Complaint and to state a claim upon which relief can be granted; and (ii) for such other and further relief as is just.

Respectfully submitted,

OTORO, LLC

By its attorneys.

/s/ James G. Atchison
James G. Atchison, Esq. (#782)
DarrowEverett LLP
One Turks Head Place, 12<sup>th</sup> Floor
Providence, RI 02903
(401) 453-1200
jatchison@darroweverett.com

## **CERTIFICATE OF SERVICE**

I hereby certify that on December 29, 2020, I have caused the within document to be filed with the Court via the ECF document filing system and it is available for viewing and downloading from the ECF system. As such, this document will be electronically sent to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ James G. Atchison